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8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
11 SACRAMENTO DIVISION

12  
13 **PAUL THOMAS,**

14 Plaintiff,

15 v.

16 **WARE, et al.,**

17 Defendants.  
18

2:22-cv-00177-EFB

**DEFENDANTS' REPLY IN SUPPORT  
OF MOTION TO COMPEL**

Judge: The Honorable  
Edmund F. Brennan  
Action Filed: 1/27/2022

19 On August 26, 2022, Defendants timely served their Requests for Production of  
20 Documents, and Plaintiff has continually refused to respond to them. As outlined in Defendants'  
21 motion to compel discovery responses (ECF No. 31), Defendants have tried to work with Plaintiff  
22 to obtain the requested documents on several occasions, based on his numerous representations  
23 that he temporarily did not have access to the documents. On September 1, 2022, Plaintiff  
24 claimed his legal material was lost during a transfer to a different institution. On October 19,  
25 2022, Plaintiff claimed that the California Health Care Facility "neglect[ed] to provide [him] all  
26 of [his] legal documentation pertaining to this case." On November 8, 2022, Plaintiff stated that  
27 the requested documents were "not currently in [his] possession," and he would "mail Defendants  
28 request on a production continuation once received." Defendants accommodated Plaintiff's

1 requests, however, as shown by Defendants' motion, Plaintiff's ultimate responses were  
2 insufficient. On December 19, 2022, Defendants notified Plaintiff that his responses to the  
3 document requests were insufficient. On January 9, 2023, Plaintiff stated that he has "responded  
4 to Defendants request [and] the prison must be throwing the mail away." Plaintiff's blatant  
5 refusal to participate in the discovery process has left Defendants no other choice but to file the  
6 instant motion to compel.

7 In Plaintiff's opposition, he claimed to have attached an Exhibit A, "wherein the Court will  
8 find that 99.9% of the documents requested are in the possession of the CDCR files under  
9 Plaintiff's name and CDC number." (ECF No. 34.) However, Plaintiff's opposition does not  
10 contain any attached exhibits. Moreover, Defendants are entitled to know which documents in  
11 Plaintiff's prison files he contends support his claim for damages and injuries. Defendants should  
12 not be required to sift through Plaintiff's prison records and guess as to which ones might be  
13 responsive to their requests. *See, e.g. Spence v. Kaur*, No. 2:16-CV-1828-TLN-KJN-P, 2019 WL  
14 3842867, at \*20 (E.D. Cal. Aug. 15, 2019) (citing *Davidson v. Goord*, 215 F.R.D. 73, 77  
15 (W.D.N.Y. 2003) and holding that "defendant is entitled to discover what inmate appeals plaintiff  
16 contends exhausted his administrative remedies as to the instant retaliation claims" and plaintiff's  
17 reference to central file records in prison's possession was not sufficient).

18 In addition, Defendants' requests for production of documents contain requests for  
19 documents that would not be in Plaintiff's CDCR file. For example, Defendants' Request for  
20 Production of Documents No. 8 and No. 9 request all documents produced and received in any  
21 related criminal matter. (ECF No. 31 at p. 13.) Defendants' counsel contacted the Sacramento  
22 County Superior Court Criminal Records Department on August 25, 2022, and he was told that  
23 Plaintiff does have pending criminal cases. All of Defendants' requests are for information that is  
24 relevant to Plaintiff's claims for damages or Defendants' potential defenses, and Plaintiff did not  
25 provide any objection that would excuse him from providing responsive documents or state that  
26 no such responsive documents exist. *See* Fed. R. Civ. P. 26(c)(1).

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1 Defendants met their burden in moving to compel Plaintiff to respond to Defendants'  
2 requests for production. However, Plaintiff's opposition fails to present any documents or  
3 evidence, through declaration or otherwise, to show that he actually responded properly to  
4 Defendants' requests or that he served responses that support his claim that his mail was lost.  
5 Moreover, Plaintiff does not explain why he did not resend any allegedly lost responses.  
6 Accordingly, the Court should grant Defendants' motion and compel Plaintiff to respond to  
7 Defendants' discovery requests without objection.

8 Dated: March 10, 2023

Respectfully submitted,

9 ROB BONTA  
10 Attorney General of California  
11 TYLER V. HEATH  
Supervising Deputy Attorney General

12 */s/ Garrett L. Seuell*  
13 GARRETT L. SEUELL  
14 Deputy Attorney General  
Attorneys for Defendants Ware and Avila

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## CERTIFICATE OF SERVICE

Case Name: **Paul Thomas (AZ2563) v. Ware, et al.**  
No. **2:22-cv-00177-TLN-EFB (PC)**

I hereby certify that on **March 10, 2023**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On **March 10, 2023**, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

**Paul Anthony Thomas (AZ-2563)**  
**California State Prison - Sacramento**  
**P.O. Box 290001**  
**Represa, CA 95671**

The following **UNPUBLISHED** cases have been served on Plaintiff:

➤ ***Spence v. Kaur*, 2019 WL 2566970**

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **March 10, 2023**, at Sacramento, California.

K. Jeffers

Declarant

/s/ **K. Jeffers**

Signature